

1 The standard for issuance of a certificate of appealability calls for a “substantial
2 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). The Supreme Court
3 interpreted 28 U.S.C. § 2253(c) as follows:

4 Where a district court has rejected the constitutional claims on
5 the merits, the showing required to satisfy §2253(c) is straightforward:
6 The petitioner must demonstrate that reasonable jurists would find the
7 district court’s assessment of the constitutional claims debatable or wrong.
8 The issue becomes somewhat more complicated where, as here, the district
9 court dismisses the petition based on procedural grounds. We hold as follows:
10 When the district court denies a habeas petition on procedural grounds
11 without reaching the prisoner’s underlying constitutional claim, a COA should
12 issue when the prisoner shows, at least, that jurists of reason would find it
13 debatable whether the petition states a valid claim of the denial of a
14 constitutional right and that jurists of reason would find it debatable whether
15 the district court was correct in its procedural ruling.

16
17 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also James v. Giles*, 221 F.3d 1074, 1077-79
18 (9th Cir. 2000). The Supreme Court further illuminated the standard for issuance of a certificate of
19 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). In that case, the Court stated:

20 We do not require petitioner to prove, before the issuance of a COA,
21 that some jurists would grant the petition for habeas corpus. Indeed, a
22 claim can be debatable even though every jurist of reason might agree,
23 after the COA has been granted and the case has received full
24 consideration, that petitioner will not prevail.

25 *Miller-El*, 537 U.S. at 338 (quoting *Slack*, 529 U.S. at 484).

26 The Court finds that petitioner has not shown that reasonable jurists would find
debatable the Court’s dismissal of the habeas petition in this action. It is plain to the Court that
petitioner has not exhausted any of the claims he asserts in this case, that habeas relief could not
conceivably be granted in this case, and that a stay, pursuant to *Rhines v. Weber*, 544 U.S. 269
(2005) is unwarranted. The Court will therefore deny petitioner a certificate of appealability.

///

///

///

///

1 **IT IS THEREFORE ORDERED** that petitioner's Motion to Alter or Amend
2 Judgment (docket #5) is **DENIED**.

3 **IT IS FURTHER ORDERED** that petitioner is **DENIED** a Certificate of
4 Appealability.

5 **IT IS FURTHER ORDERED** that the Clerk shall process petitioner's appeal.

6 DATED: February 25, 2008.

7
8 
9 _____
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26